

*What Every Member of the
Trade Community Should Know About:*

The African Growth and Opportunity Act



IMPORTANT NOTICE

The information contained in this publication is based on the **interim regulations** which were published in the *Federal Register* on October 5, 2000 (65 *Federal Register* 59668-59681) and the corrections published on November 9, 2000 (65 *Federal Register* 67260). Readers are cautioned that substantive and/or procedural changes may be made in the final regulations.

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NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Office of Regulations and Rulings has prepared this publication on ***The African Growth and Opportunity Act*** as part of a series of informed compliance publications advising the public of new or revised regulations or procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Stuart P. Seidel,
Assistant Commissioner
Office of Regulations and Rulings

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Introduction

On May 18, 2000, Public Law 106-200, the Trade and Development Act of 2000 (the “Act”), was signed into law. Title I of the Act, which is entitled “African Growth and Opportunity Act” (the “AGOA”), extends certain trade benefits to sub-Saharan Africa. This informed compliance publication covers the trade benefits administered by the Customs Service which are contained in Title I of the Act. A separate informed compliance publication will cover Title II, the “United States-Caribbean Basin Trade Partnership Act” (the “CBTPA”).

Subtitle A of Title I is codified at 19 U.S.C. 3701-3706 and;

- authorizes the President to designate a sub-Saharan African country as an “eligible” sub-Saharan African country if the President determines that the country meets specified eligibility requirements and
- requires the President to terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements.

This publication does not cover the procedures for being designated an eligible beneficiary sub-Saharan African country. That information is available in *“The African Growth and Opportunity Act Implementation Guide”* (October 2000) that was prepared by the United States Trade Representative (co-sponsored by the United States Agency for International Development) which may be downloaded from the Internet at <http://www.ustr.gov/regions/africa/agoaguides.html>. It is available in English and French. Additional information concerning the textile and apparel portions of the law, including copies of the law and Proclamations, is available for downloading from the Department of Commerce, International Trade Administration, Office of Textiles and Apparel web site http://www.otexa.ita.doc.gov/Trade_Act_2000.stm. Information on the General System of Preferences (GSP) program and downloadable guides are available at <http://www.ustr.gov/gsp/general.shtml>.

A list of the implementing Proclamations, designations by the U.S. Trade Representative (USTR), notices issued by the Committee for the Implementation of Textile Agreements (CITA), and Customs regulations, and their *Federal Register* publication dates and pages appears near the end of this publication.

List of Sub-Saharan African Countries

The following countries (or any successor political entities) are included in the Act as “sub-Saharan African” countries and are referred to as “listed countries” in this publication. The table also shows which countries have been designated as “eligible beneficiary countries,” and which are considered as “lesser developed beneficiary” countries under AGOA or “least developed beneficiary developing” countries under GSP. Although 34 countries were determined to be AGOA eligible on October 2, 2000,

the list of enhanced duty-free items under the Generalized System of Preferences (GSP) took effect on December 21, 2000. Shipments made between October 2 and December 21, 2000 are **not** eligible for duty rebates.

AGOA eligibility **does not** automatically imply eligibility under the apparel provisions, which require implementation of an effective visa system and an enforcement mechanism to prevent illegal transshipment. Countries shown in **bold** type below have been designated eligible for the textile and apparel provisions as of April 23, 2001. (Check the *Federal Register* for more recent designations):

Republic of Angola ³	Republic of Liberia
Republic of Benin ^{1,2,3}	Republic of Madagascar ^{1,2,3}
Republic of Botswana ¹	Republic of Malawi ^{1,2,3}
Burkina Faso ³	Republic of Mali ^{1,2,3}
Republic of Burundi ³	Islamic Republic of Mauritania ^{1,2,3}
Republic of Cameroon ^{1,2}	Republic of Mauritius ¹
Republic of Cape Verde ^{1,2,3}	Republic of Mozambique ^{1,2,3}
Central African Republic ^{1,2,3}	Republic of Namibia ¹
Republic of Chad ^{1,2,3}	Republic of Niger ^{1,2,3}
Federal Islamic Republic of the Comoros ³	Federal Republic of Nigeria ^{1,2}
Democratic Republic of Congo ³	Republic of Rwanda ^{1,2,3}
Republic of the Congo ^{1,2}	Democratic Republic of São Tomé and Príncipe ^{1,2,3}
Republic of Cote d'Ivoire	Republic of Senegal ^{1,2}
Republic of Djibouti ^{1,2,3}	Republic of Seychelles ¹
Republic of Equatorial Guinea ³	Republic of Sierra Leone ^{1*,2*,3}
Republic of Eritrea ^{1,2,3,4}	Somalia
Ethiopia ^{1,2,3}	Republic of South Africa ¹
Gabonese Republic ¹	Republic of Sudan
Republic of the Gambia ³	Kingdom of Swaziland ⁵
Republic of Ghana ^{1,2}	United Republic of Tanzania ^{1,2,3}
Republic of Guinea ^{1,2,3}	Republic of Togo ³
Republic of Guinea-Bissau ^{1,2,3}	Republic of Uganda ^{1,2,3}
Republic of Kenya ^{1,2}	Republic of Zambia ^{1,2,3}
Republic of Lesotho ^{1,2,3}	Republic of Zimbabwe

Eligibility: With the exception of Liberia and Somalia, all the countries on the list are eligible for GSP.

¹ These countries were designated as eligible for benefits under AGOA by Proclamation 7350 of October 2, 2000

* Effective date to be decided by USTR

² These countries were designated as eligible for benefits under AGOA and considered "Lesser Developed Beneficiary Countries" under AGOA by Proclamation 7350 of October 2, 2000.

³ Considered "Least-Developed Beneficiary Developing Countries" under GSP

⁴ Designated as a "beneficiary developing country" under GSP by Proclamation 7350 of October 2, 2000

⁵ Designated eligible for benefits under AGOA and a "Lesser Developed Beneficiary Country" as of January 17, 2001

Subtitle B of Title I of the Act concerns trade benefits under the AGOA, and is discussed below.

General System of Preferences (GSP)

The Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or “GSP,” statute codified at 19 U.S.C. 2461-2467) by inserting a new section 506A (codified at 19 U.S.C. 2466a) entitled “DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.”

The new provision authorizes the President, subject to certain eligibility requirements and criteria, to designate a listed country as a beneficiary sub-Saharan African country eligible for the preferential tariff treatment benefits listed below. The President is required to terminate a designation if he determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

What articles are covered?

The President is authorized to provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country if, after receiving the advice of the International Trade Commission, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

- Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;
- Import-sensitive electronic articles;
- Import-sensitive steel articles;
- Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;
- Import-sensitive semi-manufactured and manufactured glass products; and
- Any other articles which the President determines to be import-sensitive in the context of the GSP.

The list of GSP eligible products under AGOA is available for downloading and may be found at <http://www.agoa.gov/gsplist.pdf>.

What are the rules?

Duty-free treatment will apply to any designated article listed above that meets the requirements of the basic GSP origin and related rules **and** two additional rules:

- the article must have become the growth, product, or manufacture of a beneficiary sub-Saharan African country by some process other than a simple combining or packaging operation or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article,
- the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States,
- the article must have at least 35 percent of its appraised value attributed to the sum of the direct costs of processing operations performed in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries that are members of the same association of countries and are treated as one country under section 507(2) of the GSP statute, plus the cost or value of the materials produced in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries, and
- as variations from the general GSP 35 percent value-content rule (the two additional rules):
 - the cumulation of the cost or value of materials from different beneficiary countries is **not** dependent on those beneficiaries being members of an association of countries; and
 - the cost or value of materials produced in the customs territory of the United States (the 50 States and the District of Columbia and Puerto Rico) may be counted toward the 35 percent requirement to a maximum of 15 percent of the article's appraised value.

The Act amends the GSP statute by providing for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country.

Procedures and Recordkeeping

The implementing regulations specify the manner in which a claim for duty-free treatment should be made. The procedures specified in the GSP regulations are followed, but the symbol “**D**” (rather than “**A**”) is used as the special program indicator on the Customs entry documentation.

An importer claiming duty-free treatment must make and maintain (for a period of 5 years from the date of entry) the following records:

- Records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

- Records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country.
 - If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country.
 - If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin requirements. A properly completed GSP declaration in the prescribed format is one example of a record that would serve this purpose;
- Shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in the regulations were met;
- Records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in 19 CFR §10.176(a) and 19 CFR §10.178a(c). A properly completed GSP declaration in the form set forth in 19 CFR §10.173(a)(1) is one example of a record that would serve this purpose.

The importer must establish and implement internal controls that provide for the periodic review of the accuracy of the declarations or other records which establish that an article is the growth, product or manufacture of a beneficiary sub-Saharan African country. The importer must be prepared to produce the required records within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to above justify the importer's claim for duty-free treatment.

Textile and Apparel Products

Section 112 of the Act (codified at 19 U.S.C. 3721 and thus outside the GSP statutory framework) sets forth **new** rules that provide for the preferential treatment of certain textile and apparel products. Moreover, these rules in effect operate as an exception to the approach under the GSP because the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP. The **interim** implementing Customs regulations were published in the *Federal Register* on October 5, 2000 (65 *Federal Register* 59668-59681) and will be codified in title 19, Code of Federal Regulations (CFR) sections 10.211-10.217.

Certain textile and apparel articles that are imported directly into the customs territory of the United States from an eligible beneficiary sub-Saharan African country will enter the United States free of duty and free of any quantitative limitations, if the country has satisfied the requirements set forth in the Act. The Harmonized Tariff Schedule of the United States (HTSUS) has been amended by inserting new U.S. notes in subchapter II of chapter 98 and a new subchapter XIX in chapter 98 to cover the new benefits.

What articles are covered?

These products are as follows:

- Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading **9802.00.80** of the HTSUS;
- Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes (new subheading **9819.11.03** HTSUS);
- Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if those articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States (new subheading **9819.11.06** HTSUS);
- Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary sub-Saharan African countries) (new subheading **9819.11.09** HTSUS), subject to rules or conditions (new U.S. note 2 to Subchapter XIX, HTSUS) involving:
 - application of quantitative limits on preferential treatment (in effect, tariff rate quotas) for each of eight 1-year periods beginning on October 1, 2000, with a percentage increase in each year,
 - subject to those tariff rate quota provisions and until September 30, 2004, application of preferential treatment to apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries

regardless of the country of origin of the fabric used to make the articles (new subheading **9819.11.12** HTSUS), and

- application of an import surge safeguard mechanism that could lead to suspension by the President of duty-free treatment for an article if increased imports of that article cause serious damage, or the threat of serious damage, to a domestic industry producing a like or directly competitive article;
- Cashmere sweaters, that is, sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the HTSUS (new subheading **9819.11.15** HTSUS);
- Wool sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries (new subheading **9819.11.18** HTSUS);
- Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement (NAFTA) (new subheading **9819.11.21** HTSUS). This AGOA provision applies to apparel articles which would be originating goods, and thus would be entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include:
 - fine count cotton knitted fabrics for certain apparel,
 - linen, silk, cotton velveteen,
 - fine wale corduroy,
 - Harris Tweed,
 - certain woven fabrics made with animal hairs,
 - certain lightweight, high thread count poly-cotton woven fabrics, and
 - certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts.(See House Report 106-606, 106th Congress, 2d Session, at page 77.);
- Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that the President or his designee have designated in the *Federal Register* as not available in commercial quantities in the U.S. (new subheading **9819.11.24** HTSUS); and
- A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles (new subheading **9819.11.27** HTSUS).

What definitions are used?

For purposes of these provisions, Customs uses the following definitions:

Apparel articles means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more beneficiary countries when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

Cut in one or more beneficiary countries when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

Knit-to-shape applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is “knit-to-shape.”

Major parts means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

Originating means having the country of origin determined by application of the provisions of 19 CFR §102.21.

Wholly assembled in. When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression “wholly assembled in” means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

Wholly formed when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Subsection (c) of section 112 permits the elimination of existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius within 30 days after those countries adopt effective visa systems to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documentation relating to the importation of the articles into the United States. The U.S. Trade Representative published the necessary declarations in the *Federal Register* effective for articles entered, or withdrawn from warehouse, for consumption on or after January 18, 2001 for Kenya, and January 19, 2001 for Mauritius.

What special rules are applied?

Section 112 also sets forth special rules for purposes of determining the eligibility of articles for preferential treatment. These special rules are as follows:

- **Findings and trimmings.** As a general rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if the value of those foreign findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. This provision specifies the following as examples of findings and trimmings:
 - sewing thread,
 - hooks and eyes,
 - snaps, buttons,
 - “bow buds,”
 - decorative lace trim,
 - elastic strips (but only if they are each less than 1 inch in width and used in the production of brassieres),
 - zippers (including zipper tapes), and
 - labels.

However, as an exception to the general rule, there is a provision that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of “foreign” origin).

- **Specific interlinings,** that is, a chest type plate, a “hymo” piece, or “sleeve header,” of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains the specified interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. There is also a provision for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.
- ***De minimis* rule.** Finally, there is a *de minimis* rule which provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

Customs Procedures

In order to claim preferential treatment under section 112, the articles must be imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country and an importer must make a written declaration that the article qualifies and be in possession of a valid Certificate of Origin. In the case of any textile or

apparel article described in 9802.00.8042 or 9819.11.03 through 9819.11.27, the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. (► *Note: For technical reasons, the provision in the interim regulations which requires the use of the symbol “D” as a prefix to the subheading within Chapter 98 of the HTSUS for 9802.00.80 should **not** be followed. The final regulations will correct this provision.*)

Certificate of Origin and Declaration

Any importer who claims preferential treatment under section 112 must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented by regulations. This NAFTA provision concerns the use of a Certificate of Origin and specifically requires that the importer:

- make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good,
- have the Certificate in its possession at the time the declaration is made,
- provide the Certificate to Customs on request, and

promptly (within 30 calendar days after the date of discovery of the error) make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in the regulations (reproduced in the Appendix to this publication). Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

- Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or
- A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

A Certificate of Origin submitted to Customs:

- Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;
- Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;
- Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and
- May be applicable to:
 - A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

- Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. "Identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

Correction and non-acceptance of Certificate. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with the regulations, the importer will be given a period of not less than five working days to submit a corrected Certificate. A blanket Certificate will not be accepted in connection with subsequent importations during the remaining period covered by the Certificate if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

The Certificate of Origin that otherwise would be required will not be required if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

An importer is not required to have a Certificate of Origin in his possession (except as otherwise provided below), for:

- An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;
- A non-commercial importation of an article; or
- A commercial importation of an article whose value does not exceed US\$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:

- () Producer
- () Exporter
- () Importer
- () Agent

Name

Title

Address

Signature and Date

Exception. If the port director determines that an importation described above forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement, the port director will notify the importer in writing that for that importation the importer must

have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. A “series of importations” means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

Direct Import Requirement

As previously stated, in order to claim preferential treatment, the articles must be imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country. For purposes of this provision, the words “***imported directly***” mean:

- Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;
- If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or
- If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:
 - Remained under the control of the customs authority of the intermediate country;
 - Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer’s sales agent; and
 - Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

Verification and Justification of Claim for Preferential Treatment

A claim for preferential treatment, including any statements or other information contained on a Certificate of Origin submitted to Customs, are subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

- All records required to be made, kept, and made available to Customs by the importer or any other person under 19 CFR part 163;
- Documentation and other information in a beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the

number and identification of the types of machinery used in production, and the number of workers employed in production; and

- Evidence in a beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

Importer requirements. In order to make a claim for preferential treatment, the importer:

- Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the qualifying provisions. If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the prescribed form is a record that would serve these purposes;
- Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to above;
- Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in the regulations were met; and
- Must be prepared to explain, upon request from Customs, how the records and internal controls referred to above justify the importer's claim for preferential treatment.

Penalties

If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile and apparel articles, the President shall deny all benefits under section 112 of the AGOA to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter for a period of 5 years. In Executive Order 13191, the President delegated his authority under this provision to the Committee for the Implementation of Textile Agreements ("CITA"). For purposes of this provision:

- "transshipment" has occurred when preferential treatment has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components, and
- "false information" is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment.

In addition to this AGOA specific penalty, importers, exporters, and others providing false or fraudulent information or otherwise violating the Customs laws may be subject to civil penalties and/or criminal fines and imprisonment under the general Customs and related laws, and the imported merchandise may be subject to seizure or detention. For example, civil penalties may be assessed under 19 U.S.C. §1592, which prohibits any person from fraudulently or negligently entering, introducing, or attempting to enter or introduce merchandise into the U.S. by means of materially false documentation, information or statements, acts or material omissions.

Appendix

African Growth and Opportunity Act Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address	
3. Importer Name & Address		6. U.S./ African Fabric Producer Name & Address	
4. Description of Article	5. Preference Group	7. U.S./ African Yarn Producer Name & Address	
		8. U.S. Thread Producer Name & Address	
		9. Name of Handloomed, Handmade or Folklore Article	
10. Name of Preference Group H Fabric or Yarn:			

Preference Groups:

- A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(1)].
- B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(2)].
- C: Apparel cut and assembled from U.S. fabric from U.S. yarn and thread [19 CFR 10.213(a)(3)].
- D: Apparel assembled from regional fabric from yarn originating in the U.S. or one or more beneficiary countries [19 CFR 10.213(a)(4)].
- E: Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)].
- F: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)].
- G: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)].
- H: Apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213(a)(8) or (a)(9)].
- I: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(10)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company	
14. Name (Print or Type)		15. Title	
16a. Date (DD/MM/YY)	16b. Blanket Period From: To:	17. Telephone Number Facsimile Number	

Preparation of Certificate. The following rules will apply for purposes of completing the AGOA Certificate of Origin.

1. Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;
2. Block 1 should state the legal name and address (including country) of the exporter;
3. Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;
4. Block 3 should state the legal name and address (including country) of the importer;
5. Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;
6. In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;
7. Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;
8. Block 6 should state the legal name and address (including country) of the fabric producer;
9. Block 7 should state the legal name and address (including country) of the yarn producer;
10. Block 8 should state the legal name and address (including country) of the thread producer;
11. Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;
12. Block 10, which should be completed only when preference group "H" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;
13. Block 16a should reflect the date on which the Certificate was completed and signed;
14. Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see 19 CFR §10.216(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The "to" date is the date on which the blanket period expires; and
15. The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

List of Proclamations and Federal Register Notices

Proclamations

1. Proclamation 7350 of October 2, 2000 "To Implement the African Growth and Opportunity Act and To Designate Eritrea as a Beneficiary Developing Country." (Designates beneficiary countries under AGOA, delegates the President's authority to the USTR, and modifies the Harmonized Tariff Schedule) 65 *Federal Register* 59321-59327, October 4, 2000.
2. Proclamation 7383 of December 1, 2000 "To Implement Title V of the Trade and Development Act of 2000 and To Modify the Generalized System of Preferences." 65 *Federal Register* 76551-76557, December 6, 2000.
3. Proclamation 13191 of January 17, 2001 "Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act." (Delegations to CITA and USTR) 66 *Federal Register* 7271-7273, January 22, 2001.
4. Proclamation 7400 of January 17, 2001 "To Designate Swaziland as a Beneficiary Sub-Saharan African Country and for Other Purposes." 65 *Federal Register* 7373-7374, January 23, 2001.

Committee for the Implementation of Textile Agreements (CITA) Notices

1. "Duty and Quota Free Imports of Apparel Articles Assembled From Regional and Other Fabric for Beneficiary Sub-Saharan African Countries." Issued by CITA, 65 *Federal Register* 61148, October 16, 2000.
2. "Procedures in Considering Requests Under the Textile and Apparel 'Short Supply' Provisions of The African Growth and Opportunity Act and The United States-Caribbean Basin Trade Partnership Act." Issued by CITA, 66 *Federal Register* 13502-13504, March 6, 2001

U.S. Trade Representative Notices

1. "Determination Under the African Growth and Opportunity Act." [Kenya]. Issued by USTR, 66 *Federal Register* 7836-7837, January 25, 2001.
2. "Visa Requirements Under the African Growth and Opportunity Act." Issued by USTR, 66 *Federal Register* 7837-7839, January 25, 2001.
3. "Determination Under the African Growth and Opportunity Act." [Mauritius] Issued by USTR, 66 *Federal Register* 8440-8441, January 31, 2001.
4. "Determinations Under the African Growth and Opportunity Act." [Madagascar] Issued by USTR, 66 *Federal Register* 14242, March 9, 2001.
5. "Determinations Under the African Growth and Opportunity Act." [South Africa] Issued by USTR, 66 *Federal Register* 14425-14426, March 12, 2001
6. "Determinations Under the African Growth and Opportunity Act." [Lesotho] Issued by USTR, 66 *Federal Register* 21192, April 27, 2001

U.S. Customs Service Regulations

1. "African Growth and Opportunity Act and Generalized System of Preferences." [interim implementing regulations] Issued by U.S. Customs Service, 65 *Federal Register* 59668-59681, October 5, 2000.

2. "African Growth and Opportunity Act and Generalized System of Preferences." [corrections to the interim implementing regulations] Issued by U.S. Customs Service, 65 *Federal Register* 67260, November 9, 2000

Additional Information

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site contains the most current electronic versions of, or links to:

- Customs Regulations and statutes
- Federal Register and public information notices
- The Customs Bulletin and Decisions
- Binding Rulings
- Publications including-
 - *Importing Into the U.S.*
 - other Informed Compliance Publications in the "*What Every Member of the Trade Community Should Know About:...*" series
 - *Customs Valuation Encyclopedia*
- Video Tape availability and ordering information
- Information for small businesses

The web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. The web site also links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December 1999, the CEBB has been only accessible through the web site. Finally, Customs web site contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed customs broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will usually be found under U.S. Government, Treasury Department.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).



**U.S. Customs Service
Washington, D.C. 20229**

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